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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/626,020   | 07/24/2003  | Celite Milbrandt     | 062891.1149         | 9959             |
| 5073   | 7590        | 09/19/2006           | EXAMINER            |                  |
| BAKER BOTTS L.L.P.<br>2001 ROSS AVENUE<br>SUITE 600<br>DALLAS, TX 75201-2980 |             |                      |                     | TRAN, QUOC DUC   |
|  |             | ART UNIT             |                     | PAPER NUMBER     |
|  |             | 2614                 |                     |                  |

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/626,020             | MILBRANDT, CELITE   |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Quoc D. Tran           | 2614                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 June 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4, 7-14, 17-23, 26-34 and 37-41 is/are rejected.
- 7) Claim(s) 5, 6, 15, 16, 24, 25, 35 and 36 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 7-8, 10-14, 17-18, 20-23, 26-27, 29-34, 37-38 and 40-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Takatori et al (6,229,855).

Consider claims 1-2, 10, 14, 20, 29-30 and 40-41; A method for determining the transmit power of a communication device operating on a twisted pair subscriber line (abstract), comprising: storing noise information for a subscriber line (col. 5 lines 7); storing cross-channel-coupling information (i.e., crosstalk or interferences) for the subscriber line (col. 4 lines 1-18); and determining the transmit power of a communication device operating on the subscriber line based upon the noise information and the cross-channel-coupling information (col. 4 lines 36-62).

Consider claims 3 and 22, col. 4 lines 2-4, lines 36-62 of Takatori et al read on the claimed limitations.

Consider claims 4, 23 and 34, col. 3 lines 40-48 read on the claim limitations.

Consider claims 7-8, 17-18, 26-27 and 37-38, Fig. 1 ADLS and HDSL read on the claimed limitations.

Consider claims 11 and 21, col. 5 lines 13-20 read on the claimed limitations.

Consider claims 12-13, 32-33, col. 3 lines 29-48 read on the claimed limitations.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 9, 19, 28 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takatori et al (6,229,855).

Consider claims 9, 19, 28 and 39, Takatori et al did not suggest determining the data rate capacity of the subscriber line using the transmit power of the communication device. However, it is well known in the art that the data rate capacity is determined based on the characteristic (noise, power spectral density, interferences, etc.) of the subscriber line. Therefore, it would have been obvious to anyone of the ordinary skill in the art to recognize that the capacity of the line maybe determined from the transmit power of the communication device.

***Allowable Subject Matter***

5. Claims 5-6, 15-16, 24-25 and 35-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
7. Any response to this action should be mailed to:

Art Unit: 2614

Mail Stop \_\_\_\_ (explanation, e.g., Amendment or After-final, etc.)  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Facsimile responses should be faxed to:

**(571) 273-8300**

Hand-delivered responses should be brought to:

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Quoc Tran** whose telephone number is **(571) 272-7511**. The examiner can normally be reached on M, T, TH and Friday from 8:00 to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Curtis Kuntz**, can be reached on **(571) 272-7499**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Technology Center 2600** whose telephone number is **(571) 272-2600**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**QUOC TRAN**  
**PRIMARY EXAMINER**

AU 2614

September 12, 2006